IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.909 OF 2006

Jeetubhai Kanabar .. Petitioner

Versus

M/s.Prem Prakash Synthetic .. Respondent

Mr.Anita Bhaktwani for petitioner

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th February 2006.

P.C.

. Heard Ms.Bhaktwani for petitioner.

2. I have perused the plaint, application for leave to defend taken out by petitioner and the reply thereto by original plaintiff-

respondent.

3. Trial Court is right in holding that defences raised by petitioner are an after thought. Petitioner-defendant had received notices prior to the institution of suit which have not been replied and for the first time the entire transaction is disowned at the hearing of summons for judgement. A decree for Rs.80,000/- is claimed but despite the observations to the above effect, the trial court has protected petitioner and granted conditional leave to defend the suit. Such orders which are purely discretionary and based upon materials produced do not require interference under Article 227 of Constitution of India. Petition dismissed.

4. The judgement reported in A.I.R. 1990 S.C. 2218 (Raj Dugal Vs. Ramesh Kumar Bansal) relied upon by Ms.Bhatwani which sets out well settled principles which have to be applied for

grant of leave to defend in a summary suit is followed and applied. The trial Judge has decided the application for leave to defend consistent with these principles and despite holding that the defences raised do not give rise to any triable issue, are in the nature of afterthought and practically moonshine, granted opportunity to petitioner to substantiate his case after depositing a sum of Rs.50,000/- in the trial court. The order is in accordance with the settled principles laid down in the aforesaid decision of the Supreme Court. Even for this reason, I do not find that this is a fit case for interference. At the request of Ms.Bhaktwani time to deposit is extended by four weeks.

(S.C.DHARMADHIKARI, J)